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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,817	01/13/2004	Timothy G. Haines	3293.03US10	2382

7590 03/02/2007  
Brad Pedersen  
Patterson, Thunte, Skaar & Christensen, P.A.  
4800 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402-2100

EXAMINER
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HOFFMAN, MARY C

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/02/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/756,817	Applicant(s) HAINES, TIMOTHY G.	
	Examiner Mary Hoffman	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 35-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35-42, 44, 45 and 47-54 is/are allowed.
- 6) ☒ Claim(s) 43 and 46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

Applicant's arguments, see pages 20-21, filed 02/05/2007, with respect to the finality of the office action mailed 12/21/2006 being premature, have been fully considered and are persuasive. The finality of the rejection mailed 12/21/2006 has been withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 43 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Bert et al. (U.S. 5,234,433).

Bert et al. disclose a method for a knee arthroplasty procedure comprising providing a cutting guide having a slot adapted to receive and guide a cutting tool, the cutting tool having a saw blade with at least one cutting edge at a distal end of a long axis of the saw blade; positioning the cutting guide in a position proximate an end of one of a femur or a tibia with at least a portion of the slot facing the end of the one of the femur or the tibia from one of a medial aspect or a lateral aspect; extending the saw blade through the slot; cutting the end of the one of the femur or the tibia by moving the cutting tool in at least one of a medial to lateral direction or a lateral to medial direction

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to create at least one resected surface; and implanting a knee arthroplasty implant on the at least one resected surface (FIG. 36). The cutting tool is a powered saw and the step of cutting is performed with the powered saw selected from the set consisting of an oscillating saw or a reciprocating saw (ref. #145).

### ***Response to Arguments***

Applicant's arguments filed 02/05/2007 have been fully considered but they are not persuasive.

Applicant argues that the device of Bert et al. is "adapted to face and abut the anterior tibial surface on the operative side" rather than the claimed limitation of "facing the end of one of the femur or the tibia from one of a medial aspect or a lateral aspect..." Although the examiner agrees that the device of Bert et al. is placed on the anterior side of the tibia, the device also appears to conform to the curvature of the tibia partially along the lateral side. Therefore, the examiner is considering the device of Bert et al. to meet Applicant's limitation as it is currently claimed. In addition, Applicant argues that the Bert et al. reference does not show "moving the long axis of the cutting tool in at least one of a medial to lateral or a lateral to medial direction..." The examiner respectfully disagrees, because this limitation merely describes that the long axis is moving from side to side, which is will clearly do as the cutting tool is moved sideways along the length of slot (ref. #122,123 shown in FIG. 36). This limitation does not specify whether the cutting tool is moving along the long axis, perpendicular to the long axis, or at angles in between. This limitation merely requires that the cutting tool and its

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long axis moves lateral to medial or visa versa, and NOT that the cutting tool moves along its long axis, the long axis being oriented lateral to medial or visa versa. Since the entire cutting tool appears to move medial to lateral in FIG. 36, the examiner is considering the Bert et al. to meet the limitation of cutting by moving the long axis of the cutting tool in a medial to lateral direction, since the long axis of the cutting tool will certainly move sideways as the cutting tool itself moves sideways.

The rejections are deemed proper.

#### ***Allowable Subject Matter***

Claims 35-42, 44-45 and 47-54 are allowed.

#### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER